

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	CIV-18-874-SLP
)	
TRESSA LENAÆ BREWER, <i>et al.</i>)	
Defendant(s).)	

FORECLOSURE JUDGMENT

The Court finds:

1. Plaintiff, United States, served all defendants more than twenty-one (21) days prior to this date.
2. Defendants Tressa Lenae Brewer, Kevin Kyle Brewer and Dean Graumann, are in default. Defendant Landon Roberts has answered, counterclaimed and cross-claimed on September 27, 2018, which pleadings were timely filed.
3. Defendant AgPreference Credit Association, PCA has also timely answered the Complaint and asserted its Amended Counterclaim/Cross-claim on February 13, 2019.
4. Defendant AgPreference Credit Association, PCA served defendants Tressa Lenae Brewer and Kevin Kyle Brewer more than twenty-one (21) days prior to this date.
5. Defendants Tressa Lenae Brewer, Kevin Kyle Brewer and Dean Graumann, are in default on the Amended Counterclaim/Cross-claim. Plaintiff and defendant Oklahoma Tax Commission have answered the Amended Counterclaim/Cross-claim, which pleadings were timely filed.

6. The allegations of the Amended Counterclaim/Cross-claim are true as set forth below.

7. The allegations of the Complaint are true, and there is due and owing to plaintiff from Defendant Tressa Lenae Brewer on the promissory note and mortgage:

Principal.....	\$302,316.00
Accrued interest as of September 5, 2018.....	<u>\$48,976.51</u>
Amount due as of September 5, 2018	\$351,292.51

plus accruing interest on the principal at the rate of \$28.9892 per diem from September 5, 2018, to the date of judgment.

8. The Plaintiff's mortgage is a valid second lien on the following real property:

TRACT 1: The Southwest Quarter (SW/4) of Section Five (5) Township Five (5) North, Range Twenty-one (21) WIM, Greer County, State of Oklahoma

TRACT II: The Southwest Quarter (SW/4) of Section Fourteen (14) Township Five (5) North, Range Twenty-one (21) WIM, Greer County, State of Oklahoma

9. The Plaintiff's mortgage is a valid first lien on the chattel which includes Tressa Lenae Brewer's interest in any crops grown on the property listed in paragraph 4.

10. Defendant Landon Roberts has also filed herein his Disclaimer acknowledging that he has harvested all growing crops and collected any insurance proceeds from crop insurance and has no further interest in the real estate that is the subject of this case.

11. The right, title or interest of all Defendants in the stated real property described above is junior and inferior to the second lien of the Plaintiff, Defendant Ag Preference Credit Association mortgage including its attorney fees incurred in protecting

its lien and unpaid real property taxes of Greer County, and/or special assessments given priority by law, if any. The rights of any junior lien claimants to any excess funds remaining after sale and distribution shall be determined upon further hearing and after notice to all parties.

12. Plaintiff's note and mortgage are in default and the real property described above should be foreclosed.

13. Defendant AgPreference Credit Association, PCA has pending an Amended Counterclaim/Crossclaim. In it Defendant AgPreference Credit Association, PCA's alleges there is due and owing to it on the promissory note and mortgage described therein:

Principal.....	\$20,739.69
Accrued interest as of December 5, 2018.....	<u>\$2,117.60</u>
Total principal and interest as of December 5, 2018.....	\$22,857.29

In addition, Defendant AgPreference Credit Association, PCA has incurred attorney fees and will continue incurring attorney fees and costs until this case is concluded, and the promissory note provides that it is entitled to collect its attorney fees, court costs, and other expenses, that such expenditures are secured by its mortgage, that they become principal under the loan, and that they shall bear interest as provided in the promissory note. The interest rate accruing on principal, interest, attorney fees, court costs and other expenses is 5.25% per annum. Both interest and attorney fees and costs continue to accrue and are due to Defendant AgPreference Credit Association, PCA as accrued. Upon application of Defendant AgPreference Credit Association, PCA the total amount due will be determined by the Court for disbursement of sale proceeds.

14. The mortgage of Defendant AgPreference Credit Association, PCA is a valid first lien on the following real property:

TRACT 1: The Southwest Quarter (SW/4) of Section Five (5) Township Five (5) North, Range Twenty-one (21) WIM, Greer County, State of Oklahoma

TRACT II: The Southwest Quarter (SW/4) of Section Fourteen (14) Township Five (5) North, Range Twenty-one (21) WIM, Greer County, State of Oklahoma

15. The right, title or interest of Plaintiff and all other Defendants in the real property described above is junior and inferior to the first lien of Defendant AgPreference Credit Association, PCA except for unpaid real property taxes of Greer County, and/or special assessments given priority by law, if any. The rights of any junior lien claimants to any excess funds remaining after sale and distribution shall be determined upon further hearing and after notice to all parties.

16. There is due and owing to AgPreference Credit Association, PCA from Defendants Tressa Lenae Brewer and Kevin Brewer a/k/a Kevin Kyle Brewer and each of them *in rem* on the promissory note and mortgage described in its Amended Counterclaim/Cross-claim:

Principal	\$18,807.61
Accrued interest as of December 5, 2018	\$1,873.32
Total principal and interest as of December 5, 2018	\$20,680.93

In addition, Defendant AgPreference Credit Association, PCA has incurred attorney fees, court costs, and other expenses and will continue incurring attorney fees, court costs and other expenses until this case is concluded, and the promissory note provides that it is entitled to collect its attorney fees, court costs, and other expenses *in rem* from Defendants Tressa Lenae Brewer and Kevin Brewer a/k/a Kevin Kyle Brewer, that such expenditures

are secured by its mortgage, that they become principal under the loan, and that they shall bear interest as provided in the promissory note. The interest rate accruing on principal, interest, attorney fees, court costs and other expenses is 5.25% per annum. Interest and attorney fees, court costs and other expenses continue to accrue and are due to Defendant AgPreference Credit Association, PCA as accrued. Upon application of Defendant AgPreference Credit Association, PCA the total amount due will be determined by the Court for disbursement of sale proceeds.

17. The mortgage of Defendant AgPreference Credit Association, PCA is a valid first lien on the following real property:

TRACT 1: The Southwest Quarter (SW/4) of Section Five (5) Township Five (5) North, Range Twenty-one (21) WIM, Greer County, State of Oklahoma

TRACT II: The Southwest Quarter (SW/4) of Section Fourteen (14) Township Five (5) North, Range Twenty-one (21) WIM, Greer County, State of Oklahoma

18. In addition, at the time of the making of such loan, Defendants Tressa Lenae Brewer and Kevin Brewer a/k/a Kevin Kyle Brewer acquired capital stock in AgPreference, PCA, which stock was pledged as additional security for the repayment of such loan. That stock remains an asset of the bankruptcy estate of Defendants Tressa Lenae Brewer and Kevin Brewer a/k/a Kevin Kyle Brewer as noted below, and AgPreference, PCA is stayed from enforcing any lien on it at this time. Entry of this Foreclosure Judgment shall not affect the lien of AgPreference on such stock.

19 The right, title or interest of Plaintiff and all other Defendants in the real property described above is junior and inferior to the first lien of Defendant AgPreference Credit Association, PCA except for unpaid real property taxes of Greer County, and/or

special assessments given priority by law, if any. The rights of any junior lien claimants to any excess funds remaining after sale and distribution shall be determined upon further hearing and after notice to all parties.

19. The note and mortgage of Defendant AgPreference Credit Association, PCA are in default and the real property described above should be foreclosed.

20. The mortgage herein described provides that the benefit of all stay and homestead laws is waived along with the benefit of all appraisement laws at the option of AgPreference Credit Association, PCA. AgPreference Credit Association, PCA elects to have the real property sold with appraisement immediately upon judgment being rendered herein.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED:

The Plaintiff, United States of America has a judgment of foreclosure in the sums below:

Principal.....	\$302,316.00
Accrued interest as of September 5, 2018.....	<u>\$48,976.51</u>
Amount due as of September 5, 2018	\$351,292.51

plus accruing interest on the principal at the rate of \$28.9892 per diem from September 5, 2018, to the date of judgment and thereafter post-judgment interest will accrue on the total sum of this judgment at the rate provided by 28 U.S.C. 1961, until paid.

Defendant AgPreference Credit Association, PCA have judgment *in rem* against Defendants Tressa Lenae Brewer and Kevin Brewer a/k/a Kevin Kyle Brewer and each of them on its Amended Counterclaim/Cross-claim as follows:

Principal.....\$18,807.61
 Accrued interest as of December 5, 2018\$1,873.32
 Total principal and interest as of December 5, 2018\$20,680.93
 Attorney fees, court costs, and other expenses incurred herein in an amount to be later determined.
 Interest on all principal from September 11, 2018, and on all attorney fees, court costs, and other expenses from the respective dates paid at the rate of 5.25% per annum.

A special execution and order of sale shall issue directing the United States Marshal to levy upon, advertise and sell the real property described (but not crops stored thereon) above **without appraisal**, free of any right, title or interest of all defendants, except unpaid real property taxes of Greer County, and/or special assessments given priority by law, if any, and the proceeds of the sale shall be paid as follows:

- a. The costs of the sale, including unpaid real property taxes of Greer County, and/or special assessments given priority by law, if any;
- b. The mortgage lien of Defendant Ag Preference Credit Association, PCA including its attorney fees, court costs and other expenses incurred in protecting its lien;
- c. The foreclosure judgment of the United States of America as herein set out; and,
- d. The remainder into the Registry of this Court to await further order of the Court concerning the priority of the junior lienholders.

A special execution and order of sale shall issue upon application of Defendant AgPreference Credit Association, PCA directing the United States Marshal to levy upon, advertise and sell the real property described in paragraph 17 above **with appraisal**, free of any right, title or interest of Plaintiff and all defendants, except unpaid real property

taxes of Greer County, and/or special assessments given priority by law, if any, and subject to any right of redemption of Plaintiff and the proceeds of the sale shall be paid as follows:

- a. The costs of the sale, including unpaid real property taxes of Greer County, and/or special assessments given priority by law, if any;
- b. The mortgage lien of Defendant Ag Preference Credit Association, PCA including its attorney fees, court costs and other expenses incurred in protecting its lien;
- c. The foreclosure judgment of the United States of America as herein set out; and,
- d. The remainder into the Registry of this Court to await further order of the Court concerning the priority of the junior lienholders.


That upon confirmation of the United States Marshal's sale, all parties and all persons claiming by, through or under them, are barred, foreclosed and enjoined from asserting any right, title or interest in the real property described above without prejudice to Landon Robert's right to any crops stored on the property and any right of redemption of Plaintiff if sold under special execution and order of sale upon application of Defendant AgPreference Credit Association, PCA.

A special execution and order of sale shall issue directing the United States Marshal to levy upon, with the use of an auctioneer, to advertise and sell the chattel property belonging to Tressa Lenae Brewer, Kevin Kyle Brewer or Dean Grauman described above **without appraisal**, free of any right, title or interest of all defendants, except unpaid real property taxes of Greer County, and/or special assessments given priority by law, if any, and the proceeds of the sale shall be paid as follows:

- a. The costs of the sale, including unpaid real property taxes of Greer County, and/or special assessments given priority by law, if any;
- b. The foreclosure judgment of the United States of America as herein set out; and,
- c. The remainder into the Registry of this Court to await further order of the Court concerning the priority of the junior lienholders.

That upon confirmation of the United States Marshal's sale, all defendants and all persons claiming by, through or under them, are barred, foreclosed and enjoined from asserting any right, title or interest in the property described above.

That is foreclosure judgment be entered this 22nd day of July, 2019.



SCOTT L. PALK
UNITED STATES DISTRICT JUDGE

APPROVED BY:

s/ Kay Sewell

KAY SEWELL, OBA 10778
Assistant U.S. Attorney
210 Park Avenue, Suite 400
Oklahoma City, OK 73102

s/Donald P. Ferguson

DONALD P. FERGUSON, OBA 2872
415 S. 7th Street
Chickasha, OK 73018
Attorney for Ag Preference Credit Association, PCA

s/David Thomas

DAVID THOMAS, OBA 8937
Greer County District Attorney
106 E. Jefferson
Mangum, OK 73554
Attorney for Greer County Treasurer and Board of
County Commissioners of Greer County

s/Anna Wyatt

ANNA WYATT, OBA 15877

Assistant General Counsel

100 N. Broadway Ave., Suite 1500

Oklahoma City, OK 73102

Attorney for the Oklahoma Tax Commission